

[AS REPORTED FROM THE INDUSTRIAL LAW REFORM BILL
COMMITTEE]

House of Representatives, 1 December 1983.

Words struck out are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a single rule, or with single rule before first line and after last line.

[AS REPORTED FROM THE COMMITTEE OF THE WHOLE HOUSE]

House of Representatives, 9 December 1983.

Words inserted are shown in roman underlined with a double rule, or with double rule before first line and after last line.

[This Bill was formerly Part VIII of the Industrial Law Reform Bill.]

Hon. Mr Bolger

POST OFFICE AMENDMENT

ANALYSIS

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A BILL INTITULED

An Act to amend the Post Office Act 1959

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

No. 60—3H

1. Short Title and commencement—(1) This Act may be cited as the Post Office Amendment Act 1983, and shall be read together with and deemed part of the Post Office Act 1959* (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the 1st day of February 1984. 5

New

2. Interpretation—Section 210 of the principal Act (as substituted by section 2 of the Post Office Amendment Act 1967) is hereby amended by adding the following definition: 10

“‘Society of workers’ or ‘association of workers’ or ‘organisation of workers’ means a society or association or organisation of persons lawfully associated for the purpose of protecting or furthering the interests of employees.” 15

3. New sections substituted—The principal Act is hereby amended by repealing section 221 (as amended by section 4 (1)(g) of the Post Office Amendment Act 1980), and substituting the following sections:

“**221. Voluntary union membership**—(1) Nothing in any determination made under section 219 of this Act or under the State Services Conditions of Employment Act 1977 shall require any officer— 20

“(a) To become or remain a member of the Post Office Union (Incorporated) or of any union, society, association, or organisation of workers; or 25

“(b) To cease to be a member of the Post Office Union (Incorporated) or of any union, society, association, or other organisation of workers; or

“(c) Not to **(be) become** a member of the Post Office Union (Incorporated) or of any union, society, association, or other organisation of workers. 30

“(2) Where any determination made under section 219 of this Act or under the State Services Conditions of Employment Act 1977, including any such determination in force on the **(passing of the Industrial Law Reform Act 1983)** commencement of the Post Office Amendment Act 1983, imposes or purports to impose (whether by way of an unqualified preference provision 35

*Reprinted 1970, Vol. 3, p. 2155

Amendments: 1971, No. 120; 1972, No. 123; 1973, No. 2; 1973, No. 86; 1974, No. 64; 1975, No. 24; 1975, No. 98; 1977, No. 72; 1978, No. 24; 1980, No. 41; 1981, No. 26; 1982, No. 45; 1982, No. 95; 1982, No. 161

or otherwise) any requirement that contravenes subsection (1) of this section, that requirement or purported requirement shall be of no effect.

“221A. **Prohibition on preference**—(1) Except as otherwise expressly provided in this Act, nothing in any determination made under section 219 of this Act or under the State Services Conditions of Employment Act 1977 shall confer on any person, by reason of that person’s membership or non-membership of the Post Office Union (Incorporated) or any union, society, association, or other organisation of workers,—

- “(a) Any preference in obtaining or retaining employment; or
- “(b) Any preference in relation to terms of employment or conditions of employment or fringe benefits or opportunities for training, promotion, or transfer; or

New

“(c) Any preference in relation to the formula that will be used to assess compensation for redundancy.

“(2) Where any determination made under section 219 of this Act or under the State Services Conditions of Employment Act 1977, including any such determination in force on the (passing of the Industrial Law Reform Act 1983) commencement of the Post Office Amendment Act 1983, imposes or purports to impose any requirement that contravenes subsection (1) of this section, that requirement or purported requirement shall be of no effect.

New

“(3) Nothing in this section prevents any determination making provision for officers or employees or the Post Office Union (Incorporated) or any union, society, association, or other organisation of workers to hold a stop-work meeting in working hours.

Struck Out

“221B. **Discrimination**—It shall be unlawful for the Director-General—

- “(a) To refuse or omit to employ any person by reason of that person’s membership or non-membership of the Post Office Union (Incorporated) or any union, society, association, or other organisation of workers; or

Struck Out

- “(b) To dismiss any officer on the grounds of that officer’s membership or non-membership of the Post Office Union (Incorporated) or of any union, society, association, or other organisation of workers; or 5
- “(c) To have regard to an officer’s membership or non-membership of the Post Office Union (Incorporated) or any union, society, association, or other organisation of workers when determining whether that officer will be dismissed by reason of 10 redundancy.

New

- “221B. **Discrimination**—It shall be unlawful for the Director-General—
- “(a) To refuse or omit to employ any person by reason of 15 the fact that that person—
- “(i) Is a member of the Post Office Union (Incorporated) or any union, society, association, or other organisation of workers or intends to become a member of the Post Office Union (Incorporated) 20 or any union, society, association, or other organisation of workers; or
- “(ii) Is not a member of the Post Office Union (Incorporated) or any union, society, association, or other organisation of workers or intends to cease 25 to be a member of the Post Office Union (Incorporated) or any union, society, association, or other organisation of workers or intends not to become a member of the Post Office Union (Incorporated) or any union, society, association, or 30 other organisation of workers; or
- “(b) To dismiss any worker or subject him to any detriment on the grounds that that worker—
- “(i) Is a member of the Post Office Union (Incorporated) or any union, society, association, or other organisation of workers or intends to become a member of the Post Office Union (Incorporated) or any union, society, association, or other organisation of workers; or 35

New

5 “(ii) Is not a member of the Post Office Union
(Incorporated) or of any union, society, association,
or other organisation of workers or intends to cease
to be a member of the Post Office Union
(Incorporated) or of any union, society, association,
or other organisation of workers or intends not to
become a member of the Post Office Union
(Incorporated) or any union, society, association, or
10 other organisation of workers; or
“(c) When determining whether an officer will be dismissed
by reason of redundancy, to have regard to whether
that officer—
15 “(i) Is a member of the Post Office Union
(Incorporated) or of any union, society, association,
or other organisation of workers or intends to
become a member of the Post Office Union
(Incorporated) or of any union, society, association,
or other organisation of workers; or
20 (ii) Is not a member of the Post Office Union
(Incorporated) or of any union, society, association,
or other organisation of workers or intends to cease
to be a member of the Post Office Union
(Incorporated) or of any union, society, association,
25 or other organisation of workers or intends not to
become a member of the Post Office Union
(Incorporated) or of any union, society, association,
or other organisation of workers; or
30 “(d) When determining, in relation to any officer, the formula
that will be used to assess compensation for
redundancy, to have regard to whether that
officer—
35 “(i) Is a member of the Post Office Union
(Incorporated) or any union, society, association, or
other organisation of workers or intends to become
a member of the Post Office Union (Incorporated)
or any union, society, association, or other
organisation of workers; or
40 “(ii) Is not a member of the Post Office Union
(Incorporated) or any union, society, association, or
other organisation of workers or intends to cease
to be a member of the Post Office Union
(Incorporated) or any union, society, association, or
45 other organisation of workers or intends not to
become a member of the Post Office Union
(Incorporated) or any union, society, association, or
other organisation of workers.

“221C. Restraint on making of determinations, etc.—

(1) No determination made under section 219 of this Act or under the State Services Conditions of Employment Act 1977 shall contain any provision that contravenes any of the provisions of **section 221 or section 221A** of this Act. 5

“(2) Where any determination made under section 219 of this Act or under the State Services Conditions of Employment Act 1977 contains a provision that contravenes any of the provisions of **section 221 or section 221A** of this Act, that provision shall, notwithstanding its making, be of no effect. 10

“221D. Undue influence—(1) No person shall exert undue influence on any officer with intent to induce that officer—

“(a) To become or remain a member of the Post Office Union (Incorporated) or any union, society, association, or other organisation of workers; or 15

“(b) To cease to be a member of the Post Office Union (Incorporated) or any union, society, association, or other organisation of workers; or

New

“(ba) Not to become a member of the Post Office Union (Incorporated) or of any union, society, association, or other organisation of workers; or 20

“(c) On account of the fact that that officer is, or, as the case may be, is not, a member of the Post Office Union (Incorporated) or any union, society, association, or other organisation of workers, to resign any position or to leave any employment. 25

“(2) Every person who contravenes **subsection (1)** of this section shall be liable—

“(a) If an officer or other person to whom the following paragraphs of this subsection do not apply, to a penalty not exceeding \$300: 30

“(b) If an officer or member of the committee of management of the Post Office Union (Incorporated) or any union, society, association, or organisation, or of the branch (if any) concerned, to a penalty not exceeding \$1,500: 35

“(c) If a person acting on behalf of an employer, to a penalty not exceeding \$1,500:

“(d) If the Post Office Union (Incorporated) or a union, society, association, organisation, or employer, to a penalty not exceeding \$3,000. 40

Struck Out

“(3) The Arbitration Court shall have full and exclusive jurisdiction to deal with all actions for the recovery of penalties under this section.

5 “(4) For the purposes of this section, every reference to the Arbitration Court shall be read as a reference to a Judge of that Court acting alone.

10 “(5) A penalty recoverable under this section shall be recovered in the same manner, with all necessary modifications, as a penalty for a breach of an award under the Industrial Relations Act 1973.

15 “(6) An action for the recovery of a penalty under this section may be brought only by the officer or by a body to which the officer belongs (being the Post Office Union (Incorporated) or a union, society, association, or organisation of officers).

20 “(7) The Arbitration Court may delegate to any District Court Judge named by it its powers and functions to deal with an action under this section and the provisions of section 49 of the Industrial Relations Act 1973 (except those of subsection (6)) shall, with all necessary modifications, apply accordingly.

New

“(3) The Public Sector Tribunal shall have full and exclusive jurisdiction to deal with all actions for the recovery of penalties under this section.

25 “(4) For the purposes of this section, every reference to the Public Sector Tribunal shall be read as a reference to the Chairman of that Tribunal acting alone.

30 “(5) A penalty recoverable under this section shall be recovered in the same manner, with all necessary modifications, as a penalty for a breach of an award under the Industrial Relations Act 1973; and sections 151 to 157 of that Act (except subsections (1), (5), and (6) of section 151) shall apply accordingly with all necessary modifications.

35 “(6) An action for the recovery of a penalty under this section may be brought only by the employee or by a body to which the employee belongs (being the Post Office Union (Incorporated) or a union, society, association, or organisation of workers).

40 “(7) The Public Sector Tribunal may delegate to any District Court Judge named by it its powers and functions to deal with an action under this section and the provisions of section 49 of the Industrial Relations Act 1973 (except those of subsection (6)) shall, with all necessary modifications, apply accordingly.

New

“(8) Without limiting the meaning of the term ‘undue influence’ in **subsection (1)** of this section, it is hereby declared that, for the purposes of that subsection, a person exerts undue influence on any officer or employee if that person— 5

“(a) Threatens the officer or employee or any relative of the officer or employee with violence, or with any loss or detriment; or

“(b) Indulges in an intimidatory course of action towards the officer or employee or any relative of the officer or employee; or 10

“(c) Directly or indirectly causes the officer or employee or any relative of the officer or employee to suffer any loss or detriment.

“(9) In this section ‘relative’ has the meaning given to it by section 2 of the Human Rights Commission Act 1977. 15

“221E. **Relief in respect of unlawful discrimination—**

(1) Where the Director-General contravenes **section 221B** of this Act, the Director-General shall be liable to a penalty not exceeding \$500 to be recovered at the suit of the person or officer in relation to whom the section is contravened. 20

New

“(1A) The Public Sector Tribunal shall have full and exclusive jurisdiction to deal with all actions for the recovery of penalties under this section. 25

Struck Out

“(2) A penalty recoverable under this section shall be recovered in the same manner, with all necessary modifications, as a penalty for a breach of an award under the Industrial Relations Act 1973. 30

“(3) Where an action is taken under this section, the Arbitration Court or the duly appointed delegate of that Court, as the case may require, shall set a date for the hearing of the action as a matter of urgency.

New

“(2) A penalty recoverable under this section shall be recovered in the same manner, with all necessary modifications, as a penalty for a breach of an award under the Industrial Relations Act 1973; and sections 151 to 157 of that Act (except subsections (1), (5), and (6) of section 151) shall apply accordingly with all necessary modifications.

“(3) Where an action is taken under this section, the Public Sector Tribunal or the duly appointed delegate of that Tribunal shall set a date for the hearing of the action as a matter of urgency.

“(4) In any action for the recovery of a penalty under this section in which it is proved that the Director-General—

- “(a) Refused or omitted to employ the person; or
- “(b) Dismissed the officer; or
- “(c) Determined that the officer would be dismissed by reason of redundancy,—

it shall be for the Director-General to prove that he did not contravene **section 221B** of this Act.

“(5) If any action for the recovery of a penalty is taken under this section, and judgment is given against the Director-General, the ~~(Arbitration Court)~~ Public Sector Tribunal, in addition to or instead of imposing a penalty under this section,—

“(a) May make an order for the reimbursement to the person or officer of a sum equal to the whole of the wages lost by the person or officer as a result of the contravention of **section 221B** of this Act; and

“(b) May also, in its discretion, make an order for—

- “(i) The reinstatement of the person or officer in his former position or in a position not less advantageous to him; or

- “(ii) The payment to the person or officer by the Director-General of such sum as the ~~(Court)~~ Tribunal thinks fit by way of compensation; or

- “(iii) Both such reinstatement and such payment.

Struck Out

“(6) No person or officer shall, in any action taken under this section, be entitled to recover by way of penalty, wages lost, and compensation a total of more than \$5,000.

“(7) For the purposes of this section, every reference to the Arbitration Court shall be read as a reference to a Judge of that Court acting alone.

New

“(7) For the purposes of this section, every reference to the Public Sector Tribunal shall be read as a reference to the Chairman of that Tribunal acting alone.

“(8) The ~~(Arbitration Court)~~ Public Sector Tribunal may delegate to any District Court Judge named by it its powers and functions to deal with an action under this section and the provisions of section 49 of the Industrial Relations Act 1973 (except those of subsection (6)) shall, with all necessary modifications, apply accordingly. 5

“(9) Every penalty recovered in an action under this section shall be paid to the ~~(Arbitration Court)~~ Public Sector Tribunal and not to the plaintiff. 10

“(10) The ~~(Arbitration Court)~~ Public Sector Tribunal may order that the whole or any part of any penalty recovered shall be paid to the plaintiff. 15

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“221F. **Third-party notice**—(1) Where a defendant claims as against any person not already a party to an action for the recovery of a penalty under section 221 E of this Act (in this section called the third party)— 20

“(a) That he is entitled to contribution or indemnity; or

“(b) That any question or issue in the action should properly be determined not only as between the plaintiff and the defendant, but also as between the plaintiff, the defendant, and the third party, or as between any or either of them; or 25

“(c) That any question or issue relating to or connected with the said subject-matter is substantially the same as some question or issue arising between the plaintiff and the defendant, and should properly be determined as aforesaid,— 30

the defendant may apply to the Arbitration Court on notice for leave to issue and serve a third-party notice, and shall attach a copy of the proposed third-party notice to the application. 35

“(2) The procedure set out in Part XIII of the District Courts Rules 1948 shall, with all necessary modifications, apply in respect of every application made and notice issued under subsection (1) of this section.

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- “**(3)** Without limiting **subsections (1) and (2)** of this section, it is hereby declared that a defendant may claim contribution or indemnity, by means of a third-party notice, against any person
 5 who has—
- “**(a)** Done or omitted to do any act for the purpose of aiding the Director-General to contravene **section 221B** of this Act; or
- 10 “**(b)** Abetted the Director-General in the contravention of **section 221B** of this Act; or
- “**(c)** Incited, counselled, or procured the Director-General to contravene **section 221B** of this Act.

New

- 15 “**221F. Contribution or indemnity in respect of unlawful discrimination**—(1) Where—
- “**(a)** The Director-General is liable to pay any penalty or other sum under **section 221E** of this Act; and
- 20 “**(b)** Any person has, before the contravention, threatened expressly or by implication that unless the Director-General contravenes **section 221B** of this Act that person will, alone or in concert with others, do any act or omit to do any act, being an act or omission likely to affect adversely the conduct of the business of the Post Office,—
- 25 that person shall be liable to make contribution towards any penalty or other sum ordered to be paid under **section 221E** of this Act.
- 30 “**(2)** Where any person who is liable to make contribution under this section purported to act at any material time on behalf of or in the name of the Post Office Union (Incorporated) or any union, society, association, or organisation of workers, the Post Office Union (Incorporated) or the union, society, association, or organisation of workers shall also be liable to make contribution under this section towards any penalty or
- 35 other sum ordered to be paid under **section 221E** of this Act.
- 40 “**(3)** In any proceedings for contribution under this section, the amount of the contribution recoverable from any person or the Post Office Union (Incorporated) or any union, society, association, or organisation of workers shall be such as may be found by the Public Sector Tribunal to be just and equitable

New

having regard to the extent of the responsibility of that person or the Post Office Union (Incorporated) or the union, society, association, or organisation of workers for the Director-General's contravention of **section 221B** of this Act and the Public Sector Tribunal shall have power to exempt any person or the Post Office Union (Incorporated) or any union, society, association, or organisation of workers from liability to make contribution, or to direct that the contribution to be recovered from any person or the Post Office Union (Incorporated) or any union, society, association, or organisation of workers shall amount to a complete indemnity.

“(4) Where a defendant claims as against any person or the Post Office Union (Incorporated) or any union, society, association, or organisation of workers not already a party to proceedings for the recovery of a penalty under **section 221E** of this Act (in this section called the third party)—

“(a) That he is entitled to contribution; or

“(b) That any question or issue in the proceedings should properly be determined not only as between the plaintiff and the defendant, but also between the plaintiff, the defendant, and the third party, or as between any or either of them—

the defendant may apply to the Public Sector Tribunal on notice for leave to issue and serve a third-party notice, and shall attach a copy of the proposed third-party notice to the application.

“(5) The procedure set out in Part XIII of the District Courts Rules 1948 shall, with all necessary modifications, apply in respect of every application made and notice issued under **subsection (4)** of this section.

“**221G. Breach of order for reinstatement**—(1) Every person shall be liable to a penalty not exceeding \$5,000 who—

“(a) Wilfully fails to comply with an order for reinstatement under **section 221E (5) (b) (i)** of this Act; or

“(b) Wilfully does or omits to do any act for the purpose of aiding any person to fail to comply with an order for reinstatement under **section 221E (5) (b) (i)** of this Act; or

“(c) Abets any person in his wilful failure to comply with an order for reinstatement under **section 221E (5) (b) (i)** of this Act; or

“(d) Incites, counsels, or procures any person to fail to comply with an order for reinstatement under **section 221E (5) (b) (i)** of this Act.

Struck Out

5 “(2) The Arbitration Court shall have full and exclusive jurisdiction to deal with all actions for the recovery of penalties under this section.

“(3) For the purposes of this section, every reference to the Arbitration Court shall be read as a reference to a Judge of
10 that Court acting alone.

“(4) A penalty recoverable under this section shall be recovered in the same manner, with all necessary modifications, as a penalty for a breach of an award under the Industrial Relations Act 1973.

15 “(5) An action for the recovery of a penalty under this section may be brought only by a person or officer who alleges that he has not been reinstated under the order to which the action relates.

“(6) The Arbitration Court may delegate to any District Court
20 Judge named by it its powers and functions to deal with an action under this section and the provisions of section 49 of the Industrial Relations Act 1973 (except those of subsection (6)) shall, with all necessary modifications, apply accordingly.

“(7) Where an action is taken under this section, the
25 Arbitration Court or the duly appointed delegate of that Court, as the case may require, shall set a date for the hearing of the action as a matter of urgency.

“(8) Every penalty recovered in an action under this section shall be paid to the Arbitration Court and not to the plaintiff.

30 “(9) The Arbitration Court may order that the whole or any part of any penalty recovered shall be paid to the plaintiff.

New

“(2) The Public Sector Tribunal shall have full and exclusive
35 jurisdiction to deal with all actions for the recovery of penalties under this section.

“(3) For the purposes of this section, every reference to the Public Sector Tribunal shall be read as a reference to the Chairman of that Tribunal acting alone.

New

“(4) A penalty recoverable under this section shall be recovered in the same manner, with all necessary modifications, as a penalty for a breach of an award under the Industrial Relations Act 1973; and sections 151 to 157 of that Act (except subsections (1), (5), and (6) of section 151) shall apply accordingly with all necessary modifications. 5

“(5) An action for the recovery of a penalty under this section may be brought only by a person or employee who alleges that he has not been reinstated under the order to which the action relates. 10

“(6) The Public Sector Tribunal may delegate to any District Court Judge named by it its powers and functions to deal with an action under this section and the provisions of section 49 of the Industrial Relations Act 1973 (except those of subsection (6)) shall, with all necessary modifications, apply accordingly. 15

“(7) Where an action is taken under this section, the Public Sector Tribunal or the duly appointed delegate of that Tribunal, as the case may require, shall set a date for the hearing of the action as a matter of urgency. 20

“(8) Every penalty recovered in an action under this section shall be paid to the Public Sector Tribunal and not to the plaintiff.

“(9) The Public Sector Tribunal may order that the whole or any part of any penalty recovered shall be paid to the plaintiff. 25

221H. Strikes and lockouts in respect of union membership—(1) Every person is liable to a penalty not exceeding \$5,000 who, being an officer, strikes for the purpose, wholly or partly, of inducing (*an employer*) the Director-General to contravene **section 221B** of this Act. 30

“(2) Every person is liable to a penalty not exceeding \$5,000 who, being an employer, locks out any officer for the purpose, wholly or partly, of inducing those officers or any of them—

“(a) To become or remain members of the Post Office Union (Incorporated) or any union, society, association, or other organisation of workers; or 35

“(b) To cease to be members of the Post Office Union (Incorporated) or any union, society, association, or other organisation of workers; or 40

New

“(c) Not to become members of the Post Office Union (Incorporated) or a union, society, association, or organisation of workers.

- 5 “(3) Every person who incites, instigates, aids, or abets a breach of **subsection (1) or subsection (2)** of this section, or who incites, instigates, or assists any person who has struck or locked out in breach of **subsection (1) or subsection (2)** of this section to continue to be a party to a strike or lockout shall be liable—
- 10 “(a) If an officer or other person to whom the following paragraphs of this subsection do not apply, to a penalty not exceeding \$300:
- “ (b) If an officer or member of the committee of management of the Post Office Union (Incorporated) or any union, society, association, or other organisation, of offices or of the branch (if any) concerned, to a penalty not exceeding \$1,500:
- 15 “(c) If a person acting on behalf of an employer, to a penalty not exceeding \$1,500:
- 20 “(d) If the Post Office Union (Incorporated) or a union, society, association, or other organisation of workers or an employer, to a penalty not exceeding \$3,000.
- “ (4) Every person who is a party to, or incites, instigates, aids, or abets a strike or lockout of a kind mentioned in
- 25 **subsection (1) or subsection (2)** of this section shall, in addition to any penalty to which he may be liable under **subsection (1) or subsection (2) or subsection (3)** of this section, be liable at the suit of any person suffering any loss or damage thereby or apprehending the suffering of any loss or damage thereby to
- 30 any or all of the remedies available in civil proceedings in tort, and to the same extent as if the strike or lockout were a tort independently of this section.

Struck Out

35 “(5) The Arbitration Court shall have full and exclusive jurisdiction to deal with all actions for the recovery of penalties under this section.

“ (6) For the purposes of this section, every reference to the Arbitration Court shall be read as a reference to a Judge of that Court acting alone.

40 “(7) A penalty recoverable under this section shall be recovered in the same manner, with all necessary modifications, as a penalty for a breach of an award under the Industrial Relations Act 1973.

Struck Out

“(8) An action for the recovery of a penalty under this section in respect of a strike or lockout may be brought only by a person who alleges that he has suffered loss or damage thereby.

5

“(9) Where, in any action for the recovery of a penalty under this section in respect of a strike or in any proceedings taken under **subsection (4)** of this section in respect of a strike, it is proved that the officer was a party to the strike and that there are reasonable grounds for believing that the strike was for the purpose, wholly or partly, of inducing the employer to contravene **section 221B** of this Act, the burden of proving that the strike was not wholly or partly for that purpose shall lie on the defendant.

10

“(10) Where, in any action for the recovery of a penalty under this section in respect of a lockout or in any proceedings taken under **subsection (4)** of this section in respect of a lockout, it is proved that the employer locked out officers and that there are reasonable grounds for believing that the lockout was for the purpose, wholly or partly, of inducing those officers or any of them—

15

“(a) To become or remain members of the Post Office Union (Incorporated) or any union, society, association, or other organisation of workers; or

“(b) To cease to be members of the Post Office Union (Incorporated) or any union, society, association, or other organisation of workers,—

25

the burden of proving that the lockout was not wholly or partly for that purpose shall lie on the defendant.

“(11) The Arbitration Court may delegate to any District Court Judge named by it its powers and functions to deal with an action under this section for the recovery of a penalty and the provisions of section 49 of the Industrial Relations Act 1973 (except those of subsection (6)) shall, with all necessary modifications, apply accordingly.

30

“(12) Where an action for the recovery of a penalty is taken under this section, the Arbitration Court or the duly appointed delegate of that Court, as the case may require, shall set a date for the hearing of the action as a matter of urgency.

“(13) Every penalty recovered in an action under this section shall be paid into Court and not to the plaintiff.

35

“(14) The Arbitration Court may order that the whole or any part of any penalty recovered shall be paid to the plaintiff.

New

- “221^{HA}. **Secondary strikes and lockouts in respect of union membership**—(1) Every person is liable to a penalty not exceeding \$5,000 who, being an officer, strikes for the purpose, wholly or partly, of expressing opposition to the membership or non-membership of any union, society, association, or organisation of workers by any other worker or workers in the employment of any other employer.
- 5
- “(2) Every person is liable to a penalty not exceeding \$5,000 who, being the Director-General, locks out any officers, for the purpose, wholly or partly, of expressing opposition to the membership or non-membership of any union, society, association, or organisation of workers by any worker or workers in the employment of any other employer.
- 10
- “(3) Every person who incites, instigates, aids, or abets a breach of **subsection (1) or subsection (2)** of this section, or who incites, instigates, or assists any person who has struck or locked out in breach of **subsection (1) or subsection (2)** of this section to continue to be a party to a strike or lockout shall be liable,—
- 15
- “(a) If an officer or other person to whom the following paragraphs of this subsection do not apply, to a penalty not exceeding \$300:
- “(b) If an officer or member of the committee of management of the Post Office Union (Incorporated) or any union, society, association, or organisation, or of the branch (if any) concerned, to a penalty not exceeding \$1,500:
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- “(c) If a person acting on behalf of an employer, to a penalty not exceeding \$1,500:
- “(d) If the Post Office Union (Incorporated) or a union, society, association, or organisation, or employer, to a penalty not exceeding \$3,000.
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- “(4) Every person who is a party to, or incites, instigates, aids, or abets a strike or lockout of a kind mentioned in **subsection (1) or subsection (2)** of this section shall, in addition to any penalty to which he may be liable under **subsection (1) or subsection (2) or subsection (3)** of this section, be liable at the suit of any person suffering any loss or damage thereby or apprehending the suffering of any loss or damage thereby to any or all of the remedies available in civil proceedings in tort, and to the same extent as if the strike or lockout were a tort independently of this section.
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- 40

New

“(5) Nothing in **section 221H** of this Act shall affect any liability under this section, save that when a penalty has been imposed on, or a judgment has been obtained against, any person under this section no further proceedings shall be taken or continued against him under **section 221H** of this Act in respect of the same act. 5

“**221HB. Proceedings relating to strikes and lockouts (including secondary strikes and lockouts) in respect of union membership**—(1) The Public Sector Tribunal shall have full and exclusive jurisdiction to deal with all actions for the recovery of penalties under **section 221H** or **section 221HA** of this Act. 10

“(2) For the purposes of this section, every reference to the Public Sector Tribunal shall be read as a reference to the Chairman of the Tribunal acting alone. 15

“(3) A penalty recoverable under this section shall be recovered in the same manner, with all necessary modifications, as a penalty for a breach of an award under the Industrial Relations Act 1973; and sections 151 to 157 of that Act (except subsections (1), (5), and (6) of section 151) shall apply accordingly with all necessary modifications. 20

“(4) An action for the recovery of a penalty under **section 221H** or **section 221HA** of this Act in respect of a strike or lockout may be brought only by a person or employee who alleges that he has suffered loss or damage thereby. 25

“(5) Where, in any action for the recovery of a penalty under **section 221H** or **section 221HA** of this Act in respect of a strike or in any civil proceedings taken under **section 221H (4)** or **section 221HA (4)** of this Act in respect of a strike, it is proved that the officer was a party to the strike and that there are reasonable grounds for believing that the strike was— 30

“(a) For the purpose, wholly or partly, of inducing the Director-General to contravene **section 221B** of this Act; or 35

“(b) For the purpose, wholly or partly, of expressing opposition to the membership or non-membership of any union by any other worker or workers in the employment of any other employer,— 40
the burden of proving that the strike was not wholly or partly for that purpose shall lie on the defendant.

New

“(6) Where, in any action for the recovery of a penalty under **section 221H or section 221HA** of this Act in respect of a lockout or in any civil proceedings taken under **section 221H (4) or section**
5 **221HA (4)** of this Act in respect of a lockout, it is proved that the Director-General locked out officers and that there are reasonable grounds for believing that the lockout was—

“(a) For the purpose, wholly or partly, of inducing those officers or any of them—

10 “(i) To become or remain members of the Post Office Union (Incorporated) or a union, society, association, or organisation of workers; or

15 “(ii) To cease to be members of the Post Office Union (Incorporated) or a union, society, association, or organisation of workers; or

“(iii) Not to become members of the Post Office Union (Incorporated) or a union, society, association, or organisation of workers; or

20 “(b) For the purpose, wholly or partly, of expressing opposition to the membership or non-membership of a union, society, association, or organisation of workers by any worker or workers in the employment of any other employer,—

the burden of proving that the lockout was not wholly or partly
25 for that purpose shall lie on the defendant.

“(7) The Public Sector Tribunal may delegate to any District Court Judge named by it its powers and functions to deal with an action under **section 221H or section 221HA** of this Act for the recovery of a penalty and the provisions of section 49 of the
30 Industrial Relations Act 1973 (except those of subsection (6)) shall, with all necessary modifications, apply accordingly.

“(8) Where an action for the recovery of a penalty is taken under **section 221H or section 221HA** of this Act, the Public Sector Tribunal or the duly appointed delegate of that Tribunal, as
35 the case may require, shall set a date for the hearing of the action as a matter of urgency.

“(9) Every penalty recovered in an action under **section 221H or section 221HA** of this Act shall be paid to the Public Sector Tribunal and not to the plaintiff.

40 “(10) The Public Sector Tribunal may order that the whole or any part of any penalty recovered shall be paid to the plaintiff.

“221i. **Appeal on a question of law**—(1) Any person who is directly affected by any decision of a delegate of the *(Arbitration Court)* Public Sector Tribunal acting under the authority of section 49 of the Industrial Relations Act 1973 as applied by **section 221D (7) or section 221E (8) or section 221G (6) or** 5
(section 221H (11)) section 221HB (7) of this Act and who is dissatisfied with that decision as being erroneous in point of law may, within such time and in such manner as may be prescribed, appeal to the *(Arbitration Court)* Public Sector Tribunal on that question of law only. 10

“(2) Every appeal under this section shall be dealt with in accordance with regulations made under this Act.”

4. Repeal and revocation—(1) Section 4 (1) (g) of the Post Office Amendment Act 1980 is hereby consequentially repealed. 15

(2) The Post Office Staff Regulations 1951 are hereby consequentially amended by revoking regulation 28.